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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JULIE K. PARKER et al., Plaintiffs and Appellants, v. ANGELA C. WINSLOW, Defendant and Respondent.	D053063 (Super. Ct. No. GIC840608)

APPEAL from an order after judgment of the Superior Court of San Diego County, Linda B. Quinn, Judge. Affirmed.

Plaintiffs Julie K. Parker, Juel A. Parker and Darlene O. Parker (collectively plaintiffs or the Parkers, or individually by first name when relevant) appeal from a postjudgment order awarding defendant Angela G. Winslow aka Angela Gehegan, Trustee of the Angela Gehegan Trust (Winslow) $40,636.35 in fees and costs she had incurred on appeal defending her successful summary judgment motion and judgment entered against the plaintiffs on their complaint for actual and constructive fraud in

connection with the purchase of a residence from Winslow. The trial court found that Winslow was entitled to the requested fees and costs because she was the prevailing party on the appeal, the parties' residential purchase agreement authorized the fees and costs, and the amount requested was reasonable under the circumstances.

On this appeal the plaintiffs only challenge the amount of the fees and costs awarded to Winslow, contending the trial court abused its discretion in awarding excessive fees for unreasonable and unnecessary work and the large amount "shocks the conscious and suggests that passion and prejudice influenced the determination." (*Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134 (*Akins*).) We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2001, Winslow sold her residence in the Mount Helix area of La Mesa, California to the Parkers, whose daughter Julie handled the transaction on their behalf and signed all the contract documents as their attorney-in-fact. The documents disclosed in at least four places, that the backyard fence was not on the true boundary line and enclosed some of the neighboring property with permission. Nearly four years later, the Parkers filed the instant lawsuit against Winslow alleging she had failed to disclose and intentionally misrepresented the extent of the neighbor's property, which the fence enclosed when she sold her home to them.

In the trial court, Winslow successfully moved for summary judgment with the trial court finding that Julie had no standing to sue as an attorney-in-fact and that the Parkers could not prove either damages or justifiable reliance upon any alleged

misrepresentations or concealment by Winslow. Because the real estate purchase agreement provided for the prevailing party "[i]n any action, proceeding, or arbitration . . . arising out of this Agreement . . . shall be entitled to reasonable attorney fees and costs . . . ," the court awarded Winslow $34,798 in attorney fees and costs incurred in obtaining the summary judgment. The Parkers appealed the judgment entered, but did not challenge the fees awarded.

Upon learning of the appeal, Winslow requested the trial court order the Parkers to post a bond under Code of Civil Procedure section 1030 for out-of-state litigants or, alternatively, to do so pursuant to the court's discretion under Code of Civil Procedure section 917.9. The court denied the request, finding Code of Civil Procedure section 1030 inapplicable postjudgment and electing not to require an undertaking under Code of Civil Procedure section 917.9.

The Parkers subsequently filed a 51-page opening brief on appeal, raising eight issues for finding a triable issue of fact to overturn the judgment. In response, Winslow filed a 59-page respondent's brief rebutting each of those issues. Winslow additionally requested to augment the record on appeal with a reporter's transcript of the summary judgment hearing and a request to take judicial notice that Julie was an attorney licensed to practice law in California since 1991 for purposes of assessing the reasonableness of any reliance in this case.

The Parkers 22-page reply brief included a discussion of *Manderville v. PCG&S Group, Inc*. (2007) 146 Cal.App.4th 1486, a recent decision from this court addressing reasonable reliance and the effect of exculpatory provisions in contracts, arguing such

precluded summary judgment regarding the element of justifiable reliance for their intentional fraud claims. Winslow's request to this court to file a supplemental brief to address *Manderville* was granted and she subsequently filed a six-page supplemental brief discussing and distinguishing *Manderville*.

The Parkers requested 10 minutes for oral argument and Winslow asked for 15 minutes to "address justifiable reliance and to rebut any other arguments raised." The matter was submitted after oral argument and on August 30, 2007, this court issued its 29-page unpublished opinion in Case No. D048701, affirming the trial court's grant of Winslow's summary judgment motion and entering judgment in her favor. We also awarded costs on appeal to Winslow.

After remittitur to the trial court, Winslow requested an award of attorney fees and costs she had incurred postjudgment and on appeal. In addition to filing points and authorities in support of the motion, she submitted a detailed declaration from her counsel summarizing the work done and the context of the services provided by herself and other attorneys as well as law clerks, a notice of lodged documents, which included the real estate contract and 11 billing invoices generated in this matter, plus the record in this case.

The Parkers filed a four-page opposition to the fees request, specifically objecting to any award of fees for the unsuccessful bond motion, for time reviewing a request for an extension to file an appellate brief, for a motion to augment the record on appeal, for a request for judicial notice, and for asking permission to file the supplemental brief. The Parkers additionally asserted that the time spent on the respondent's brief, the

supplemental brief and preparing for oral argument were unreasonable and excessive, and that Winslow should receive only $12,500 as a reasonable award of attorney fees on appeal. Plaintiffs' counsel filed a declaration essentially claiming that because the Parkers had not opposed any of the motions before this court and Winslow had not asked the Parkers to stipulate to such matters before bringing the various motions and requests, that such were unnecessary and Winslow should not be awarded any fees for them.

Winslow filed a 10-page reply brief refuting the Parkers' objections and additionally filed a declaration from an experienced appellate specialist who opined that the time Winslow's attorneys spent on the appeal was reasonable. Winslow also submitted a declaration from the attorney who drafted the respondent's brief on appeal, a supplemental declaration from the lead attorney in the case who specifically explained some of the charges to which the Parkers objected, and lodged with the court the appellate briefs as evidence of the work product for which the fees were sought.

The trial court issued a tentative ruling on the fees motion, stating:

> "The Court grants defendant Angela Winslow's motion for attorney fees and costs in the requested sum of $40,636.35. Attorney fees and costs are warranted because defendant Angela Winslow is the prevailing party on the appeal. Attorney fees and costs are authorized by the parties' Residential Purchase Agreement. The requested sum of attorney fees and costs is reasonable under the circumstances."

At the hearing on the matter,[1] plaintiffs' counsel highlighted several areas "of the amount of attorneys' fees" that he thought were unreasonable; i.e., the charges of "over a thousand dollars" for the unsuccessful bond motion, the failure of Winslow's counsel to call him before filing a motion to augment the record with the reporter's transcript, and the billing of almost 16 hours of time preparing for oral argument on appeal. Counsel explained that he had no argument with the work done by defense counsel, which he said was "superior," or with the hourly rate, which he agreed was "clearly reasonable." Counsel's only objection was with "the time that we're being hit with has got to be at least double what it should have taken to do that work." Counsel asked the court to "relook at this. We think a reasonable amount here is about [$]12[,000] to $13,000."

Winslow's counsel objected to the plaintiffs' implication that she was overbilling her client, stating the "time incurred was the actual time incurred." Counsel pointed out that the statements submitted would show that there were numerous instances where her firm had not billed Winslow, had used junior attorneys and had given Winslow "courtesy discounts for various items." Counsel further noted with regard to the bond motion that 20 hours of the junior associates' time was written off because of their learning curves and that the denial of a motion is not a basis for excluding the fee amount for the time spent in taking the appeal seriously even if they lost one battle along the way. Counsel justified the 16 hours spent preparing for her 15 minutes of oral argument, noting the appellate specialist agreed the time was reasonable.

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1 We granted plaintiffs' request to augment the record on appeal with the reporter's transcript of the January 11, 2008 hearing on the matter.

In response, plaintiffs' counsel objected that the appellate specialist's declaration was improper as it was not filed with the moving papers, only appearing with the reply, and clarified that he was not saying anyone padded the billing, but rather saying the amount of time spent on oral argument was "just too much. 16 hours is virtually two days of work for preparing for oral argument. I don't understand that. . . . That's the amount of time you spend when you're getting ready to do a 15 minute presentation in front of a jury, not 10 minutes in front of the court of appeal."

The trial judge granted Winslow's request, stating, "I have reviewed this motion and the opposition carefully. I have reviewed the reply and also had some concerns, although the tentative ruling does not reflect it in regard to the new evidence in the reply, and did not give it consideration because of its being new evidence in reply. But the amount reflected in the tentative, I do find is reasonable, and it is awarded."

The Parkers timely appealed from the formal order after judgment was entered awarding Winslow the entire sum of $40,636.35 as requested for fees and costs incurred on appeal.

DISCUSSION

A trial court has broad discretion in determining a reasonable amount of attorney fees. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*Drexler*).) "[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. . . . The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an

approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." (*Ibid*.)

In reviewing an order granting attorney fees for abuse of discretion, we uphold the trial court's determination of the amount of the award unless it is shown that the court was "clearly wrong," because " '[t]he "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court. . . ." [Citations.]' " (*Drexler, supra,* 22 Cal.4th at p. 1095; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 148-149.) " ' "The only basis for reversal would be that the amount was so large . . . as to 'shock the conscience' and suggest that passion and prejudice influenced the determination . . . ." [Citation.]' [Citation.]" (*Reveles v. Toyota by the Bay* (1997) 57 Cal.App.4th 1139, 1153; disapproved on other points in *Gavaldon v. DaimlerChrysler Corp.* (2004) 32 Cal.4th 1246, 1261 and *Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754, 775, fn. 6.) Thus, "in the absence of a clear abuse of discretion, we must defer to the judgment of the trial court [regarding the amount of fees awarded]." (*Avikian v. WTC Financial Corp.* (2002) 98 Cal.App.4th 1108, 1118-1119.)

Here, Winslow's counsel submitted detailed declarations explaining the services rendered in each billing period, along with time sheets, in addition to submitting applicable legal authorities and analysis in establishing the lodestar amount. The trial court reviewed all these documents plus the Parkers' opposing documents, heard oral argument on the matter and determined after careful review that the amount of fees requested was reasonable. The Parkers contend the court abused its discretion in awarding the full amount of attorney fees requested, because the court never said how it

arrived at the amount, evidencing it did "not thoroughly review the billings describing the legal work performed and did not follow the principles for determining a reasonable amount of fees," as well as failing to deduct "one minute of time, [or] one penny of charges" for work which, in their opinion, was unreasonable and unnecessary. The Parkers further assert that the time claimed for preparing the respondent's and reply briefs and for oral argument was clearly excessive thereby making the fees so large as to "shock the conscious." (*Akins, supra*, 79 Cal.App.4th at p. 1134.) We conclude the Parkers have failed to show the court abused its discretion in this matter.

At the outset we reject the Parkers' implication that the trial court essentially "rubber stamped" Winslow's fee request without an independent assessment. The record reflects, as already noted, that the court reviewed the extensive documentation submitted concerning the matter, issued a tentative ruling and then heard oral argument with regard to the Parkers' objections to the amount of fees to be awarded before finally granting the full amount of the request. Based on this record, "[w]e have no reason to doubt that the [trial] court conducted an independent assessment of the evidence presented." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140, fn. omitted (*Ketchum*).)

Further, because a trial court is not required to issue a statement of decision with regard to a fee award (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294), the fact that the trial court did not give explanations for denying any of the Parkers' objections to specific items in the billings does not show an error or abuse on the court's part. (*Ibid*.) " 'All intendments and presumptions are indulged to support [the court's ruling] on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior*

Court (1970) 2 Cal.3d 557, 564.) The Parkers did not request the court explain its reasons for overruling their objections or request a statement of specific findings regarding the amount of reasonable fees it was awarding. Under such circumstances, we presume the trial court followed the applicable law and standards in awarding such fees (*Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 563), and we defer to the court's exercise of discretion in evaluating the showing actually made before it, in light of its familiarity with the issues presented.

Contrary to the Parkers' reliance on *Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, which involved the proportional right to fees for successful civil rights litigants, to assert that the court was required to deduct time or money from the claimed fees for the time Winslow's attorneys spent on the unsuccessful bond motion, in the absence of bad faith or a showing of incompetence, a prevailing party is generally entitled to recoup fees incurred for work done even on unsuccessful avenues of attack during an overall successful litigation. (*Hensley v. Eckerhart* (1983) 461 U.S. 424; *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1303.) The Parkers have simply failed to show any incompetence or bad faith on the part of Winslow's counsel in requesting fees for the unsuccessful bond motion. The issue was specifically presented to the trial judge in both the Parkers' opposition brief to the fee request and during oral argument. After considering the matter, that judge, who had also denied the motion for the bond and thus was in the best position to decide whether the fees Winslow incurred for it were reasonable, impliedly found they were reasonable.

As to the Parkers' arguments regarding the various requests (for judicial notice and to file a supplemental brief), motions (to augment the record), and responses (agreeing to a second extension of time to file the Parkers' opening brief) Winslow's counsel filed in this court without first seeking a stipulation, because they were all filed in accordance with the California Rules of Court (see Cal. Rules of Court, rules 8.155, 8.200, 8.212, 8.220), no abuse of the trial court's discretion in awarding fees for them can be shown on this record.

Regarding the Parkers' assertion that the court improperly awarded $190 on a matter unrelated to the appeal, i.e., for the filing of an abstract of judgment to preserve Winslow's ability to collect the judgment, we note that the objection to such amount was not made below. Therefore, aside from the fact that the contractual provision for attorney fees provides for recovery of all fees and costs incurred in the litigation, which would presumably include any postjudgment enforcement efforts, we decline to consider an objection to such fee item made for the first time on appeal.

Moreover, the Parkers' claim that the time spent on the respondent's and supplemental brief and in preparing for and arguing at oral argument on the appeal was shockingly excessive (the "wow" factor) and that the fees in general were disproportionate to the fees Winslow incurred in the trial court in the first instance to win their summary judgment, " 'absent circumstances rendering the award unjust, fees recoverable . . . ordinarily include compensation for all hours reasonably spent . . . .' The amount of litigation . . . typically lies in the plaintiff's hands: having litigated the matter tenaciously, [the Parkers] ' "cannot . . . be heard to complain about the time necessarily

spent by [Winslow] in response." ' [Citation.]" (*Ketchum, supra*, 24 Cal.4th at p. 1141, fn. omitted.)

As noted above, Winslow fully documented her claimed attorney fees by submitting supporting attorney declarations, detailed billing records, and the briefing on appeal. After examining this evidence and hearing oral argument, the court concluded the amounts requested were reasonable.[2] This conclusion is supported by the record. Although the appeal should have been fairly straightforward, the Parkers substantially complicated the litigation by raising numerous positions in challenging the grant of summary judgment to which Winslow had to respond to protect her judgment on de novo review before this court. Given Winslow's attorneys' declarations and supporting documents, the court was fully justified in concluding the amount of time spent on the appeal, including preparation for oral argument, was reasonable. The Parkers have failed to meet their burden to show the trial court abused its discretion in reaching this conclusion.

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2 Although Winslow argues the court also relied on the declaration of an appellate specialist submitted with her reply to the Parkers' opposition to her fees motion, the record reflects that the court did not consider that new evidence in making its determination the fee request was reasonable.

DISPOSITION

The order is affirmed. Costs are awarded to Winslow on appeal.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.